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APPENDIX "A"

No. 44,518

IN THE

SUPREME COURT OF THE STATE OF KANSAS

THE BOARD OF SATANTA JOINT RURAL HIGH SCHOOL DISTRICT No. 2 and the Members Thereof, CARLYLE KIEHNE, WILLIAM HELTON and ELWIN ANTHONY, Individually and As Such Members,
Appellants,

vs.

THE HASKELL COUNTY PLANNING BOARD and the Members Thereof, HAROLD LOWER, RUSSELL WINTERS, WESLEY LUCAS, CHARLES McDONALD, ELWIN ANTHONY and JOE STARKE, and ADEL THROCKMORTON, State Superintendent of Public Instruction,
Appellees.

APPEAL FROM THE DISTRICT COURT OF HASKELL COUNTY, KANSAS.

HONORABLE LANGDON L. MORGAN, JUDGE.

DISTRICT COURT NO. 2746.

BRIEF OF APPELLANTS

NATURE OF ACTION

This is a class action brought on behalf of all of the resident electors of the Satanta Joint Rural High School District No. 2 of Grant and Haskell Counties, Kansas, in which it is contended by such electors that the provisions of the First Unification Act (1963), K.S.A. 72-6734 *et seq.* as it relates to the election process, violates due process of law.

* * *

ARGUMENT AND AUTHORITIES

K.S.A. 72-6743, and 62-6745 and 6746, as interpreted and applied herein, violate the First and Fourteenth Amendments of the United States Constitution because they deny due process of law to the electors involved.

* * *

When the Grant County case was before this Court, all of the aspects of this single controversy were not a matter of record. In view of the expanded records revealing the controversy now before the court, we respectfully suggest that the court should strike down the provisions of the Act as interpreted and applied in this case as being violations of the electoral processes upon which the State and our Nation are based and have their strength.

Under K.S.A. 72-6743 the appellant "electors" were officially called out of their various walks of life with the reasonable expectation created by statutory language that they were exercising the procedural steps traditionally designed to implement those rights "endowed by their Creator" mentioned in the Declaration of Independence. See Volume 6, Kansas Statute Annotated, p. 790. They also reasonably expected that in leaving their various places of business and homes, at a willing sacrifice of money and

convenience, that they were participating in that "consent of the governed" mentioned in the Declaration.

Called, as they thought, by the highest duty of a citizen, they proudly came in large numbers to participate in the electoral process. Employers, at financial loss to them, undoubtedly excused their employees from their work so that they could vote. Farmers and housewives left their work and answered the call to ballot.

In addition, the electors, in reasonable reliance upon and in anticipation of the call to ballot, and its importance, participated in the exhilarating activities which always accompany elections. They studied, they argued, they held meetings, they encouraged one another to vote, they arranged for rides for one another. Their state of mind was such as to prepare them for serious and active participation in the traditional decision-making electoral process. Great expectations were in the air. What would the all-important decision be? What would be the expressed decision of the people which would govern the destiny of this Western Kansas area in a most important aspect of its life?

Counsel are unable adequately to describe the sense of shame and hurt which understandably embraced the community when it was learned that the interpretation was that (1) when the electors voted against transfer in some gray-areas, the vote of the people was final and binding regardless of what the planning boards or the Superintendent thought, but (2) when the people voted in favor of the transfer and both planning boards opposed, the absolute joint will of the planning boards prevailed regardless of what the electors or the superintendent thought, but (3) when the people voted in favor of transfer, and the planning boards were divided, one man in Topeka could arbitrarily decide against the vote of the people, regardless of what they or the planning boards thought!

The propriety of this alternative use of the election process as having no more real ultimate meaning than a well-conducted straw vote and also as being at the same time determinative of important issues with respect to differing gray-areas involving a single planning unit was not presented in the previous Grant County case.

This on-again, off-again treatment of the electorate —this dual use of the election process both as an advisory and as a determinative measure could first be presented in this case.

We are confident that had the Court had the benefit of this record, it could not have held in *Board of Satanta* v. *Grant County Planning Board* that "the vote of the electors is merely advisory under the statute, as is the approval of the planning boards," 195 Kan. 640, at 646, and that the "legislature may use the vote of the electors in such capacity *as it sees fit* . . ." 195 Kan. 640, at 647. (Emphasis added).

* * *

Let us be clear. We do not say that, under Kansas law as now enunciated, the state superintendent could not have been empowered to define school boundaries as he might see fit.

What we do say is that the election process cannot be used in the manner it was used in this case. Such use debases and degrades the very source of our government. We do say that the statute was reasonably designed to create an expectation in the electorate that they were participating in an election—not in an advisory vote. It was so interpreted and applied, as we have shown. We say that in this case the same references to "election" and the "ballot" have been interpreted to refer both to an advisory and a binding election. We say that the result of

putting into gear such reasonable expectations by the use of such language susceptible to such meaning and associated activities and then not permitting the usual consequences to ensue undermines "real" elections and cheapens them, making the people much less likely to participate as good citizens in "real" elections when they are periodically held.

As far as we are aware, no other state has under the guise of such language called "electors" out to "ballot" for the purpose of an advisory vote.

* * *

CONCLUSION

We respectfully submit that, with an enlarged record before the court, it has been now conclusively demonstrated that the language used by the legislature to call out the electors to ballot was reasonably and effectively designed to lead the electors to believe that they were to participate in an election in the traditional sense of that word. The call to vote was so actually construed and applied as to gray-areas included in this controversy.

We submit that the court should:

(1) Construe K.S.A. 74-6743 to require the "approval" of the State Superintendent as to the procedure only, thus avoiding unconstitutional construction as applied to the Red Rock gray-area and keeping the election process inviolate.

(2) Reverse the order of the trial court, with directions to enter judgment declaratory of the rights of the parties with respect to acts complained of herein, holding void the order of the State Superintendent refusing to

transfer the Red Rock gray-area in accordance with the vote of the electors and declaring that all subsequent acts of the Superintendent or defendants including or tending to include such gray-area in the Grant County Planning Unit or excluding or tending to exclude such area from the Haskell County Planning Unit, or based upon such respective inclusion or exclusion to be null and void and of no further force or effect.

APPENDIX "B"

No. 44,518

IN THE

SUPREME COURT OF THE STATE OF KANSAS

BRIEF OF APPELLEE ADEL F. THROCKMORTON, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

NATURE OF ACTION

This originated as an action for declaratory judgment and for an injunction. After the election defeat of the unification proposal in Haskell County, the petition was amended, asking only for a declaratory judgment.

* * *

ARGUMENTS AND AUTHORITIES

I. This Appeal Has Become Moot.

* * *

II. No Controversy Exists.

* * *

III. K.S.A. 72-6743 et seq. Do Not Deny Due Process of Law to Appellants.

All argument contained in appellants' brief was directed to the issue whether appellants had been deprived of due process of law, their argument being premised upon an "abuse of the election process". This is the same argument put to the District Court in the *Grant County* case, *supra,* and was argued in appellants' brief on the appeal of that case and in the motion for rehearing of that case previously decided by this court. In fact, the five pages of their motion for rehearing in the Grant County appeal are incorporated into and substantially comprise the entire argument of their brief now before the court. Appellants are asking this court for a *rehearing* of their former motion for *rehearing* of their appeal in the Grant County case. *Without exception,* all of the authorities cited in appellants' motion for rehearing in the Grant County case are again cited in appellants' brief in the instant appeal.

The court correctly ruled on this question, that there was no violation of due process. Because appellants have no vested rights in school boundaries, they can have been "deprived" of nothing in violation of the due process amendment. The court said, in the *Grant County* decision (pages 646-7):

> "The electors have no vested right in school boundaries, nor does such right vest after they have exercised their vote in connection therewith . . . the people have, by their constitution divested themselves of all control over school boundaries and placed such authority in the hands of the legislature."

The legislature created the instrument of election in these gray area situations. The legislature then, not the electors, should have the right to say how the results of

the election would be used. This court said, in the *Grant County* case *supra* (page 644):

> "We do not know how the legislature could have made it clearer that the State Superintendent shall determine whether the gray area shall be transferred and his determination shall be conclusive."

Except for the territory involved in the *Grant County* case, *supra*, appellants' school boundaries are untouched. They enjoy the same territorial integrity as they did prior to the start of all unification in the State of Kansas under this law. There can be no violation of due process without some "deprivation of life, liberty or property".

As is evident by this law, the people residing in the gray area are not the only people concerned with this school boundary. Certainly the vastly larger number of people in both adjoining districts are affected. It would have been illogical for the legislature to have given to this small group the uncontrolled power to determine school boundaries for the larger adjoining district. The county unification elections would have been rendered a nullity, insofar as this boundary is concerned, by the action of a few.

CONCLUSION

The issues presented in this appeal have been once heard and determined by this court. The appeal should, therefore, be dismissed and the judgment below affirmed.